UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JACOBSON WAREHOUSE CO., INC., d/b/a XPO LOGISTICS SUPPLY CHAIN	)	
Plaintiff,	)	
vs.	)	Case No.
	)	JURY TRIAL DEMANDED
SCHNUCK MARKETS, INC.	)	
Defendant.	)	

COMPLAINT

COMES NOW Jacobson Warehouse Co, Inc., d/b/a XPO Logistics Supply Chain ("XPO"), and for its Complaint against Schnuck Markets, Inc. ("Defendant"), alleges and states as follows:

INTRODUCTION

1. XPO is a global logistics company that, among other things, provides warehouse management and related logistical services to clients. Defendant owns and operates "Schnucks" branded grocery stores. In 2015, Defendant contracted with XPO to provide warehouse management services for a new warehouse facility Defendant planned to open. Defendant subsequently breached its contractual and other obligations to XPO in at least three ways: (1) failing to properly equip and furnish the new warehouse facility; (2) failing to provide necessary information or otherwise cooperate with XPO, thereby materially impeding XPO's ability to manage the warehouse facility; and (3) withholding, without cause or justification, fees owed to XPO for its services. As a result of Defendant's breaches of contract and other misconduct, XPO seeks damages and a declaratory judgment stating that Defendant is in breach of its obligations

to XPO, Defendant owes XPO for the services it rendered, and XPO has validly terminated the parties' contract. XPO demands a jury trial on all issues so triable.

PARTIES, JURISDICTION, AND VENUE

2. XPO is, and at all relevant times was, a corporation incorporated and existing under the laws of the State of Iowa with its principal place of business in Greenwich, Connecticut.

3. Defendant is, and at all relevant times was, a corporation incorporated and existing under the laws of the State of Missouri with its principal place of business in St. Louis County, Missouri.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 in that there is complete diversity of citizenship between the parties and the amount in controversy exceeds the sum or value of $75,000.00, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant as it is a citizen of the State of Missouri by virtue of being incorporated and headquartered in Missouri.

6. This Court is a proper venue pursuant to 28 U.S.C. § 1391(b)(1) and (2).

ALLEGATIONS COMMON TO ALL COUNTS

THE AGREEMENT

7. XPO is a top ten global logistics company providing warehousing and related logistical services to clients all over the world, including in the St. Louis area.

8. Defendant operates "Schnucks" branded grocery stores.

9. As of an Effective Date of May 1, 2015, XPO and Defendant entered into an Amended and Restated Operating Agreement (the "Agreement"; all capitalized terms in this Complaint not otherwise defined have the definitions assigned to them in the Agreement).

Because the Agreement includes a confidentiality provision, XPO will seek leave to file under seal a true and accurate copy of the Agreement as Exhibit 1 to this Complaint.

10. The Agreement sets forth the terms and conditions under which XPO would provide certain enumerated warehouse management services for a new warehouse Defendant was then in the process of designing (the "Facility"). The Facility was to replace older warehouses used by Defendant to supply its grocery stores. The Facility would serve as a distribution center for a wide range of products, including, among other things, perishable items such as produce, dairy, deli, and seafood products.

11. In the Agreement, Defendant agreed, among other things, to pay XPO a specified fee in exchange for XPO providing warehouse management services for the Facility. Defendant also agreed to provide information and other assistance required by XPO, as set forth in the Agreement, so that XPO could properly perform the warehouse management services.

12. The Agreement contemplated that the Facility would become operational on or about July 1, 2016. This date was chosen by Defendant based upon its perceived business needs.

13. Defendant was responsible for the Facility's overall design and construction, including providing much of its necessary equipment and furnishings. Defendant constructed the Facility in the NorthPark industrial park in St. Louis County, Missouri.

DEFENDANT'S FAILURE TO ADEQUATELY PREPARE THE FACILITY

14. Before the Facility was completed, XPO advised Defendant that XPO should not begin operations at the Facility until sufficient time after the Facility was completed to permit XPO to properly train the workforce and otherwise prepare for operations.

15. On or about June 28, 2016, Defendant orally notified XPO that the Facility would be ready for occupancy on July 1, 2016. Defendant gave XPO a copy of the temporary

certificate of occupancy on July 1, 2016. Despite XPO's protests that the Facility was not ready for operations, Defendant insisted that XPO begin operations by July 6, 2016.

16. Defendant, however, in its rush to open the Facility, failed to provide the necessary equipment and furnishings that would allow XPO to properly manage and operate the Facility. Because of Defendant's actions, the Facility was not fully ready to be properly managed and operated on July 6, 2016 or for a significant period of time after that date.

17. Defendant's failures to adequately prepare the Facility for operations adversely affected XPO's ability to properly manage the Facility and were in violation of Defendant's obligations under Section 2(b) of the Agreement. Defendant's failures include the following:

- There were basic structural failures, including multiple leaks in the roof.
- The "Fresh Shipping" area, where perishable items such as produce were located, suffered from condensation issues.
- Physical security systems, such as security cameras and alarm systems, were not installed. Additionally, the security gate was not fully functional and the dock doors did not have all their seals and power systems were not installed or were not completed.
- Employee facilities, including restrooms and lockers, were not installed and/or were not functioning.
- Defendant provided no more than half of the necessary computers for the Facility and there were no multi-functional printers for the shipping office.
- Software provided by Defendant was corrupted and/or had to be rewritten. This prevented the computer system from accurately recording inventory, which was a critical component of the Facility's inventory control system.

18. Many of these deficiencies were not corrected until the end of July 2016 or even later. These and other deficiencies impeded XPO's ability to properly perform its warehouse management services. The presence of numerous outside contractors at the Facility who were continuing to work on these deficiencies further hampered XPO's ability to properly perform its warehouse management services.

DEFENDANT'S FAILURE TO PROVIDE NECESSARY INFORMATION AND PERFORM ITS OTHER OBLIGATIONS

19. In order for XPO to be able to properly manage the Facility—an approximately 870,000 square foot warehouse tasked with timely providing perishable and other goods to grocery stores throughout the St. Louis metropolitan area—Defendant was required to provide information and otherwise cooperate with XPO in accordance with the terms of the Agreement.

20. Defendant, however, failed to perform critical tasks required by Section 2(b) of the Agreement. During the particularly demanding startup period in July 2016, Defendant failed to provide accurate forecast information, required shipment of partial loads, and shipped pallets to the Facility from Defendant's other warehouses that contained mislabeled or expired inventory.

21. Defendant also failed to provide critical information required by Section 2(b) of the Agreement. Defendant failed, despite repeated requests by XPO, to timely provide quality manuals. The quality manuals identify operating procedures that XPO is to follow in storing, handling and processing specific types of inventory, such as meat and dairy products. Defendant's delay in providing quality manuals, until weeks or more had elapsed since Defendant declared the Facility "operational," impeded XPO's ability to train employees, develop standard operating procedures, and otherwise prepare for the proper management of the Facility.

22. Defendant also failed to approve the operating budget submitted by XPO as required under Section 4 of the Agreement. Defendant's failure to do so prevented XPO from properly managing the Facility, including by making it more difficult to for XPO to plan and depriving XPO of certain baseline performance measures.

DEFENDANT'S WRONGFUL WITHHOLDING OF XPO'S MANAGEMENT FEES

23. Section 4 of the Agreement provides, among other things, that in exchange for XPO's warehouse management services, Defendant is to pay XPO a weekly Warehousing Fee. The Warehousing Fee is comprised of three parts: (1) those fixed costs of the Facility not paid directly by Defendant, plus any allowable markup; (2) all variable operating costs related to the Facility, plus any allowable markup; and (3) a management fee set at a percentage of the total weekly fixed and variable costs described in numbers (1) and (2).

24. Pursuant to the Agreement, XPO timely submitted to Defendant the following invoices for the services XPO rendered:

Invoice No.	**Invoice Date**	**Amount**
1015	February 3, 2017	$203,899.55
1016	February 3, 2017	$256,729.24
5015	February 3, 2017	$441,776.17
5016	February 3, 2017	$415,023.16
	Total:	**$1,317,428.12**

25. Prior to February 3, 2017, Defendant threatened not to pay XPO the Warehousing Fees that were continuing to be due under the Agreement. XPO told Defendant that XPO expected Defendant to pay in full the Warehousing Fees as they became due. Defendant subsequently failed to pay the Warehousing Fees, including those itemized in the aforementioned invoices.

26. As of the date of this Complaint, Defendant has, without cause or justification, failed to pay the Warehousing Fee in a minimum approximate principal amount of $1,317,428.12. Additional Warehousing Fees continue to accrue and come due under the Agreement and, if not paid, represent further harm caused by Defendant's continuing breaches of the Agreement.

XPO's Notice Of Default And Termination Of The Agreement

27. Since even before Defendant prematurely declared the Facility operational, XPO has repeatedly provided Defendant with notice of the Defendant's failures to abide by the Agreement, including Defendant's failures to properly equip and furnish the Facility, to provide the required information and otherwise cooperate with XPO, and to pay the Warehousing Fee. On numerous occasions, XPO has attempted to work with Defendant in addressing Defendant's aforementioned failures to perform under the Agreement.

28. On February 8, 2017, XPO sent a letter to Defendant detailing Defendant's multiple failures to perform and informing Defendant that Defendant had been, and continued to be, in material default of its obligations under the Agreement. The letter further informed Defendant that XPO was terminating the Agreement. Because the Agreement includes a confidentiality provision, XPO will seek leave to file under seal a true and accurate copy of the February 8, 2017 letter as Exhibit 2 to this Complaint.

29. On February 14, 2017, Defendant responded to XPO's letter. In that letter, Defendant purported to terminate the Agreement effective April 20, 2017 because of XPO's alleged breaches of the Agreement. Defendant further stated that it would continue to wrongfully withhold the Warehousing Fees it owed XPO. The amount of unpaid Warehousing Fees therefore will continue to increase above the amount stated in Paragraph 26 above so long

as Defendant continues its wrongful refusal to pay the Warehousing Fees that are due. Because the Agreement includes a confidentiality provision, XPO will seek leave to file under seal a true and accurate copy of the February 14, 2017 letter as Exhibit 3 to this Complaint.

30. XPO denies that it has breached the Agreement. To the contrary, Defendant breached the Agreement for the reasons set forth in the preceding paragraphs 14-26 of this Complaint. XPO therefore terminated the Agreement in XPO's February 8, 2017 letter.

COUNT I
(BREACH OF CONTRACT)

31. XPO repeats and incorporates herein by reference the allegations set forth in Paragraphs 1 through 30.

32. Both XPO and Defendant have mutual obligations under the Agreement.

33. Both XPO and Defendant received valid consideration under the Agreement.

34. XPO fully performed its obligations under the Agreement. To the extent XPO did not fully perform, it was fully prepared to perform and did in fact tender performance, but was prevented from fully performing due to Defendant's acts and omissions.

35. Defendant failed to perform and breached the Agreement by, *inter alia*, failing to adequately equip and furnish the Facility as provided in Section 2(b), failing to provide necessary information and otherwise cooperate with XPO in the management and operation of the Facility as provided in Section 2(b), and wrongfully and without justification withholding payment of the Warehousing Fee due to XPO under Section 4.

36. XPO suffered damages from Defendant's breach of the Agreement including, but not limited to, the amount of Warehousing Fees Defendant refused to pay. As of the date of this Complaint, Defendant has failed to pay the minimum approximate principal amount of

$1,317,428.12 in Warehousing Fees owed to XPO under the Agreement. This principal amount will increase as Defendant refuses to pay invoices as they become due.

WHEREFORE, XPO prays the Court enter judgment in its favor and against Defendant in the full amount of all Warehousing Fees due to XPO, pre- and post-judgment interest, costs of suit and attorneys' fees, and for such further relief as the Court deems just and proper.

COUNT II
(DECLARATORY JUDGMENT)

37. XPO repeats and incorporates herein by reference the allegations set forth in Paragraphs 1 through 36.

38. A justiciable controversy exists between the parties as to their respective rights and obligations under the Agreement.

39. XPO has a legally protectable interest in the enforcement of the Agreement in accordance with its terms.

40. XPO presents questions that are appropriate and ripe for judicial resolution, including whether Defendant materially breached the Agreement, what are the parties' remaining obligations, if any, during the termination process, and the amount of Warehousing Fees or other amounts owed by Defendant to XPO.

41. XPO lacks an adequate alternative remedy, including that monetary damages will not provide complete relief as they would not provide certainty as to the parties' continuing obligations, if any, under the Agreement.

42. XPO respectfully requests that the Court declare: (1) Defendant is in material breach of the Agreement; (2) XPO has validly terminated the Agreement and owes no further duties or obligations to Defendant under the Agreement; and (3) Defendant owes XPO the amount of all unpaid Warehousing Fees plus pre- and post-judgment interest and costs of suit and attorneys' fees.

WHEREFORE, XPO prays the Court enter judgment in its favor and against Defendant and in so doing enter a declaratory judgment consistent with the request set forth herein and for such further relief as the Court deems just and proper.

COUNT III
(ACTION ON ACCOUNT)

43. XPO repeats and incorporates herein by reference the allegations set forth in Paragraphs 1 through 42.

44. Defendant requested that XPO furnish certain services related to management and operation of the Facility as set forth in the Agreement.

45. XPO accepted Defendant's request and furnished the requested services to Defendant.

46. XPO's invoices for the services it provided Defendant were reasonable.

47. The invoices were not paid by Defendant, despite the charges being correct.

WHEREFORE, XPO prays the Court enter judgment in its favor and against Defendant in the amount of all unpaid Warehousing Fees, pre- and post-judgment interest, costs of suit and attorneys' fees, and for such further relief as the Court deems just and proper.

COUNT IV
(QUANTUM MERUIT)

48. XPO repeats and incorporates herein by reference the allegations set forth in Paragraphs 1 through 47.

49. Defendant requested that XPO manage and operate the Facility.

50. XPO conferred a benefit upon Defendant by managing and operating the Facility.

51. Defendant appreciated that a benefit was conferred, including but not limited to executing the Agreement and, for a time, by fully paying the weekly Warehousing Fees.

52. Defendant's acceptance and retention of the benefit of XPO's management and operation of the Facility is inequitable and unjust under the circumstances as Defendant has not paid for the services XPO provided.

53. In light of the circumstances, Defendant has been unjustly enriched by its acceptance and retention of the services rendered by XPO to manage and operate the Facility without rendering full payment for the same.

54. The services provided by XPO had a fair and reasonable value not less than the amount of all unpaid Warehousing Fees.

WHEREFORE, XPO prays the Court enter judgment in its favor and against Defendant in the amount of the reasonable value of the services it rendered, in any event no less than the balance of all unpaid Warehousing Fees, plus pre- and post-judgment interest, costs of suit and attorneys' fees, and for such further relief as the Court deems just and proper.

COUNT V
(UNJUST ENRICHMENT)

55. XPO repeats and incorporates herein by reference the allegations set forth in Paragraphs 1 through 54.

56. Defendant requested that XPO manage and operate the Facility.

57. XPO conferred a benefit upon Defendant by managing and operating the Facility.

58. Defendant appreciated that a benefit was conferred, including but not limited to executing the Agreement and, for a time, by fully paying the weekly Warehousing Fees.

59. Defendant's acceptance and retention of the benefit of XPO's management and operation of the Facility is inequitable and unjust under the circumstances as Defendant has not paid for the services XPO provided.

60. In light of the circumstances, Defendant has been unjustly enriched by its acceptance and retention of the services rendered by XPO to manage and operate the Facility without rendering full payment for the same.

61. The amount of the unjust enrichment is no less than the balance of all unpaid Warehousing Fees.

WHEREFORE, XPO prays the Court enter judgment in its favor and against Defendant in the amount of the unjust enrichment, in any event no less than the balance of all unpaid Warehousing Fees, plus pre- and post-judgment interest, costs of suit and attorneys' fees, and for such further relief as the Court deems just and proper.

Respectfully submitted,

THOMPSON COBURN LLP

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